

than-arms'-length transactions are high. Additionally, alternative multi-channel programming distributors, such as wireless cable, must be able to obtain programming at a fair price if competition is to take root.⁵ The Commission must be vigilant regarding cross-subsidies in general and programming cross-subsidies in particular.

The Michigan Committee also agrees with the Commission's definition of an affiliated entity as an entity with a five percent (5%) or greater common ownership interest with the cable operator. NPRM at Footnote 67. The 5% standard proposed by the Commission is the same standard used in the cellular and other radio common carrier services under the Commission's Rules. See 47 C.F.R. § 22.13. The Michigan Committee also believes it is the appropriate measure for cable television service.

The Michigan Committee does not believe that the Commission should require cable operators to record affiliate transactions at prevailing company prices offered in the market place to third parties. NPRM at ¶ 68. It is not enough to look at the current or recent prices offered to third parties because, typically and historically, cable companies with monopolies in the market have been able to overcharge third parties for services and therefore this standard will not reflect the fair price for a service.

⁵ Competition ultimately lowers the cable operator's administrative costs, because it exempts the cable operator from rate regulation.

Instead, the Michigan Committee proposes that the Commission look at what non-cable affiliated programmers charge and historically obtained from cable companies and how much they had to pay. This will provide the Commission with a much better basis for comparison of prevailing market prices.

3. Streamlining Alternatives

A. General Alternatives

The Michigan Committee supports the Commission's attempt to streamline the administrative burdens on subscribers, franchising authorities and the Commission, but does not believe the Commission should be so concerned with streamlining the administrative burdens on cable operators. The Commission has already streamlined the administrative burdens on cable operators through establishment of the benchmark and price cap formulations. Thus, if a cable operator wants to reduce its administrative burden, it need only adhere to the benchmark. A cable operator which chooses instead to utilize the cost-of-service formulation, will have increased the administrative burden for everyone. Unless the greater administrative burden is on the operator, eventually the operator's deeper pockets will erode the regulator's resources.

If the Commission still chooses to adopt a streamline alternative under the cost-of-service approach, the Michigan Committee opposes the use of 1986 cable rates as a reasonable point of comparison. The Commission should not rely on those rates, even adjusting for inflation and productivity offset. Cable operators had a clear monopoly in 1986 and the rates from that year would not demonstrate a reasonable subscriber rate. The Commission must use another method to establish initial rates, perhaps similar to the benchmark. However, the Michigan Committee believes it might be worthwhile to compare the prices cable operators paid for programming in 1986 and what they now pay for programming to demonstrate the sizable market power enjoyed by most programmers today.

The Michigan Committee does not support the second potential alternative to cost-of-service proceedings that would permit cable operators to document key cost factors, financial characteristics, or other combinations of factors. NPRM at ¶ 72. No cable system is exactly "average" in every cost category -- every cable operator has some costs above average and some below. To allow such "add-ons" is to allow every cable operator to "cherry-pick", disclosing its higher-than-average costs while hiding its below-average costs. If a cable operator has unusual factors to justify rates that are higher than the benchmark, the operator should make a full cost-of-service showing.

In addition, the Michigan Committee opposes the alternative of utilizing an average system basis for simplified cost-of-service showings. Cable operators could use this method to obtain higher than benchmark rates without the companion higher than benchmark costs. A cable operator who wants to charge subscribers higher than benchmark rates should justify its rates through a detailed cost-of-service showing.

However, the Michigan Committee might support the Commission's establishing an abbreviated cost-of-service showing for significant prospective capital expenditures for improving quality of service to subscribers or for providing additional services to subscribers. NPRM at ¶ 75. The Michigan Committee believes this proposal should only be utilized if the cable operator is seeking approval for rates that will not be effective until the system upgrade is completed and operational. The cable operator should not be able to increase its rates until the improvement is providing a benefit to subscribers. At the point that the upgrade is operational, the cost could then be added to the rate permitted under the benchmark to the extent costs could not be recovered under that approach.

B. Equipment

The Michigan Committee supports the Commission's proposal to ascertain the average cost of equipment leased to and used by

subscribers to receive basic service and to permit operators to charge those rates. NPRM at ¶ 79. This proposal will greatly reduce the administrative burden on the regulating entities and cable operators.

4. Cost Allocation Requirements for External Costs

The Michigan Committee supports the Commission's proposal to permit or require some categories of external costs to be aggregated or averaged at the company level and then allocated to the franchise level in tiers in accordance with cost accounting requirements. NPRM at ¶ 86. In this regard, the cost accounting and allocation requirements discussed above should be applicable to external costs thereby simplifying the burden on regulators. However, the Commission should be sure that adequately detailed information is requested in order to determine the average or aggregated costs.

5. Collection of Information

The Michigan Committee encourages the Commission to request as much detailed information as possible from a cable operator justifying cost-of-service rates. NPRM at ¶ 87. In this regard, the Michigan Committee support the Commission's adoption of the form attached as Exhibit B which requires extensive information to be filed with the Commission by individual cable operators

annually. The survey alternative, also proposed by the Commission, is inadequate. NPRM at ¶ 87. While a survey is adequate for collecting general information, it is inadequate for collecting the kind of detailed information required under regulated cost-of-service showings. The form attached at Appendix B is one that the Municipalities consider appropriate in the circumstances.

CONCLUSION

In summary, the Michigan Committee believes that the cost-of-service mechanism for rates above the benchmark should only be used by cable operators in extraordinary circumstances. In those extraordinary circumstances, a cable operator must provide detailed justification for its cost-of-service rates. In all other cases, the cable operator should adhere to the benchmark and price cap approach to rates.

WHEREFORE, for the foregoing reasons, the Michigan Committee advises the Commission to allow cost-of-service showings by cable operators only in certain extraordinary circumstances and under strict regulatory guidelines.

Respectfully submitted,

MICHIGAN AD HOC COMMITTEE
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